IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07/03/2003

Coram

The Honourable Mr.Justice M. KARPAGAVINAYAGAM

CRL.R.C. No.507 of 2002

J. Vanaraj .. Petitioner

-Vs-

State, rep. by
the S.I. of Police,
Tiruchendur Police Station,
Tuticorin District.
(Crime No.41/2002) .. Respondent

Criminal Revision Case against the order dated 26.2.2002 made in Crl.M.P.No.573 of 2002 on the file of the Pincipal District-cumJudicial Magistrate, Tiruchendur.

!For Petitioner : Mr. M. Ajmal Khan

^For Respondent : Mr. E. Raja, Addl.P.P.

:O R D E R

Suspecting Vanaraj, the petitioner herein that he sent an anonymous letter to the Judicial Magistrate, Tiruchendur containing the tone of intimidation, the said Judicial Magistrate sent the same to police with a covering letter to take action against the petitioner. On receipt of the same, the Sub Inspector of Police, Tiruchendur registered a case for the offence under Section 503 read with 507 I.P.C. and arrested the petitioner Vanaraj and produced him before the very same Judicial Magistrate. He entertained the F.I.R. and the remand report and remanded the accused. While the petitioner was in remand, he filed an application under Section 59 Cr.P.C. contending that the arrest and remand is illegal and praying for the release. The learned Judicial Magistrate, the de-facto complainant defending himself dismissed the said application. This order dated 26.2.2002 has been challenged before this Court in the revision filed by the petitioner.

2. Before dealing with the question with reference to the legality of the order impugned, it would be better to refer to the relevant facts which would expose a sorry state of affairs where the Judicial Magistrate and the police have misused their powers. The facts are these:

"(a) J.Vanaraj, the petitioner herein claiming himself as a social worker used to remove garbage in his town Kulasekarapattanam after his business hour is over. On one such occasion, i.e. on 19.11.1999, when he was engaged in removing the garbage near the police station, he was taken to the police station and questioned as to how he could remove the garbage near the police station. During the course of interrogation, one Palanikumar, Sub Inspector of Police and other Constables beat him. He got himself admitted in the Government Hospital, Tiruchendur. Then, on his complaint, a case was registered against the said Sub Inspector of Police and six other Constables for the offences under Sections 147, 294(b) and 323 I.P.C. in Crime No.289/99 of Kulasekarapattanam Police Station. Since Kulasekarapattanam Police did not pursue the investigation, the petitioner filed a private complaint against the said Sub Inspector of Police and other Constables before the Judicial Magistrate, Tiruchendur. The case was taken on file in C.C.No.7 of 2000 for the offences under Sections 148, 294(b), 342 , 352 and 506(ii) I.P.C. The Kulasekarapattanam Police thereafter referred the case in Crime No.289/99 as 'mistake of fact' and filed a final report before the Judicial Magistrate, Tiruchendur. Opposing the same, the petitioner filed a protest petition requesting the Court not to accept the report and continue the trial in his private complaint.

(b) Having grudge over this, on 24.1.2002, when the petitioner was travelling in the bus, the said Palanikumar, Sub Inspector of Police and other Constables assaulted him and caused injuries. Next day, i. e. on 25.1.2002, the protest petition filed by the petitioner came up for enquiry. The petitioner who was present before the Court orally complained to the Judicial Magistrate that he was attacked by the police against whom he filed the private complaint, in the bus. There was an exchange of words between the Judicial Magistrate and the petitioner. Since the Judicial Magistrate felt that the petitioner misbehaved with him, adjourned the matter to 15.2.2002 from 25.1.2002. On 28.1.2002, the Judicial Magistrate sent a letter to the Chief Judicial Magistrate, Tuticorin informing the misbehaviour of the petitioner with him and requesting to transfer the matter to some other Court. Accordingly, the matter was transferred to the Court of Judicial Magistrate, Srivaikundam.

8 On 12.2.2002, the Judicial Magistrate, Tiruchendur received an anonymous letter containing the statement of intimidation. The Judicial Magistrate, Tiruchendur suspecting that the petitioner had written the said letter, sent the same with a covering letter to the Deputy Superintendent of Police to take action against the petitioner as the contents of the letter would attract the offence under Section 503 read with 507 I.P.C. On the very same date, the Deputy Superintendent of Police directed one Baskaran, Sub Inspector of Police, to take action after obtaining the opinion from the Assistant Public Prosecutor. The Sub Inspector of Police even without getting any opinion from the Assistant Public Prosecutor registered the case under Section 503 read with 507 I.P.C. in Crime No.41/2002 against the petitioner.

(d) On 15.2.2002, the protest petition pending before the Judicial Magistrate, Tiruchendur, came up for hearing. On that day, the petitioner was present and he was informed that the case had been transferred to the Court of

Judicial Magistrate, Srivaikundam on the orders of the Chief Judicial Magistrate. When the petitioner came out of the Court Hall, the police arrested him in the above said case. Next day, i.e. on 16.2.2002 at about 5.30 p.m., the petitioner was produced before the very same Judicial Magistrate, Tiruchendur requesting to remand him for 15 days. Accordingly, he was remanded till 1.3.2002. Then, the petitioner through his counsel filed an application under Section 59 Cr.P.C. seeking for the release and discharge on the ground that Sections 503 and 507 I.P.C. are only non-cognizable and bailable offences and as such, the arrest by the police without warrant as well as the consequent remand order passed by the de-facto complainant is illegal. The said application was dismissed by the very same Judicial Magistrate, Tiruchendur on 26.2.2002. Thereafter, the petitioner was produced before the Court on 1.3.2002 on the expiry of 15 days remand. The Judicial Magistrate, Tiruchendur thought it fit to extend the remand again for a further period of 15 days till 15.3.2002.

(e) The petitioner after obtaining the order copy on 3.3.2002, filed a revision before this Court on 7.3.2002 and the same was admitted on 8.3.2002 and notice was ordered by this Court. Thereafter, on 15.3 .2002, the petitioner who was in jail on remand, was produced before the Judicial Magistrate, Tiruchendur. This time, the Judicial Magistrate did not think it fit to extend the remand, but released him on his own bond."

3. Assailing the order impugned refusing to discharge under Section 59 Cr.P.C., Mr. Ajmal Khan, the learned counsel appearing for the petitioner would make the following submissions:
(1) The complaint which was sent by the Judicial Magistrate, Tiruchendur, as requested by him, was registered by Tiruchendur police for the offence under Section 503 read with 507 I.P.C. In pursuance of the F.I.R., the accused was arrested and produced before the same Judicial Magistrate, Tiruchendur, who in turn remanded the petitioner to judicial custody. These offences are bailable and non-cognizable. The provisions require that the police must apply for warrant from the Magistrate under Section 155(2) Cr.P.C. and then arrest the accused. In this case, admittedly, no warrant was obtained. Therefore, the arrest and consequent remand is illegal.

(2) Admittedly in this case, the complaint has been sent by the Judicial Magistrate himself. As such, he is interested in the case. Under Section 479 Cr.P.C., the Magistrate who is personally interested in the matter cannot deal with that case except with the permission of the Court to which an appeal lies from his Court. No man shall be a Judge in his own cause. Therefore, the order of remand passed by the Judicial Magistrate, who is the de-facto complainant, on 15.2.2002 remanding the accused in a case in which he is personally interested, is in utter violation of Section 479 Cr.P.C. When the arrest and remand is illegal and without jurisdiction, the Court shall release or discharge the accused by invoking Section 59 Cr.P.C. It is the bounden duty of the Court to release or discharge the accused by invoking Section 59 Cr.P.C. As such, the order refusing the discharge is illegal.

(3) The registration of the complaint under Section 503 read with 50 7 I.P.C. itself is illegal as the contents of the F.I.R. would not satisfy the

requirements of the evidence under Section 503 read with 50 7 I.P.C. As such, the entire proceedings is ab initio void.

4. On the above points, the elaborate arguments were advanced. In this case, this Court directed Mr.I.Subramanian, the learned Public Prosecutor to assist the Court. He has also made his submissions with reference to the above aspects.

5. On perusal of the serious allegations made against the Judicial Magistrate, Tiruchendur, through the affidavit and petition, this Court called for remarks from the Judicial Magistrate concerned to enable this Court to know as to what really had happened. On 23.4.2002, the Judicial Magistrate, Tiruchendur sent the remarks defending his action as well as his orders dated 15.2.2002 and 1.3.2002. The gist of the remarks of the Judicial Magistrate is summarised as follows:
"Vanaraj, the petitioner filed a private complaint against Palanikumar, Sub Inspector of Police and other Constables of Kulasekarapattanam Police Station. The same was taken on file by the Judicial Magistrate, Tiruchendur in C.C.No.7 of 2000. Earlier, the petitioner gave a police complaint which was registered in Crime No.289/99. After filing of the private complaint, the police filed a final report referring the case as a mistake of fact. On 25.1.2002, the petitioner filed a protest petition and it was posted for enquiry on the same day. On that day, the Advocates were on boycott. When the said petition was called and adjourned to 28.1.2002, the petitioner Vanaraj who was present in the Court began to shout as: "Are you a Judge by adjourning. I am here to fight against Judge and Justice. You are not giving justice to me. What can you do against me. Can you sentence of hanging. Police attack. No police action. What for court. If I attack court can police give protection. If justice is not given, close the court immediately". So shouting, the petitioner misbehaved with the Court by showing gestures in a threatening manner. Then, at the intervention of the police, he left the Court Hall. Due to this incident, the Judicial Magistrate, Tiruchendur did not like to take up his matters. Therefore, he sent a letter on 28.1.2002 to the Chief Judicial Magistrate mentioning the incident requesting to transfer all his cases to some other Court. Accordingly, by the administrative order dated 30.1.2002, the Chief Judicial Magistrate transferred the cases from the Judicial Magistrate, Tiruchendur to the Judicial Magistrate, Srivaikundam. On 12.2.2002, the Judicial Magistrate received anonymous letter containing the statement intimidating the Court. Therefore, he forwarded the said letter to the Deputy Superintendent of Police with a covering letter requesting for taking necessary action against the petitioner. Accordingly, the case was registered for the offence under Section 503 read with 507 I.P.C. In this case, the petitioner was arrested on 15.2.2002 and produced before him on 16.2.2002. Since Section 507 acts as a corollary to Section 506 I.P.C., he remanded the accused for 15 days. There was no bail application. He filed an application under Section 59 Cr.P.C. to release him by a special order. As there was no reason for discharge, that application was dismissed. However, on 15.3.2002, there was no remand extension and the petitioner was released on his own bond. As such, he had not committed any illegality and he acted only as per law and procedure."

6. On going through the remarks, this Court wanted to find out whether the very same remarks were sent to the Chief Judicial Magistrate, Tiruchendur requesting transfer through the letter dated 28.1.2002. Therefore, this Court directed the Chief Judicial Magistrate, Tuticorin, to send the copy of the letter dated 28.1.2002 requesting transfer of cases from his file to some other Court. Accordingly, this Court received the copy.

7. On a perusal of the said copy, it is noticed that even as early as 28.1.2002, the Judicial Magistrate, Tiruchendur informed the Chief Judicial Magistrate, Tuticorin that the petitioner Vanaraj misbehaved in the Court Hall in an unruly manner and abused the Magistrate and created an ugly scene. He specifically requested the Chief Judicial Magistrate to withdraw all his cases from his Court and transfer the same to some other Court, as it is not fair on his part to try those cases.

8. In view of the fact that the very same allegations against the petitioner made in the remarks sent to this Court on 23.4.2002 have been mentioned in the letter sent by him to the Chief Judicial Magistrate on 28.2.2002 itself, this Court feels that the petitioner has misbehaved in the open Court Hall before the Judicial Magistrate, Tiruchendur and used unparliamentary words wounding the feelings of the Judicial Magistrate which made him to write a letter to the Chief Judicial Magistrate to withdraw his cases from his Court. On noticing the truth of the allegations, this Court asked the counsel for the petitioner as to why contempt proceedings should not be initiated against the petitioner for the incident took place on 25.1.2002 before the Judicial Magistrate, Tiruchendur.

9. It is also noticed that the incident that took place on 25.1.2002 has been entered in the 'B' Diary of that Court dated 28.1.2002. It is quite unfortunate to notice that the counsel for the petitioner in the lower Court even though came to know about the unpleasant incident from others as well as from 'B' Diary, did not choose to advise his client to tender apology before the Judicial Magistrate, Tiruchendur. On the other hand, on behalf of the petitioner, he filed an application for discharge under Section 59 Cr.P.C. on the ground that the arrest by the police and the order of remand is illegal.

10. When this Court felt that the petitioner did not behave properly before the lower Court and the Advocate in the lower Court also had not properly advised him, Mr.Ajmal Khan, the learned counsel for the petitioner would submit that both the petitioner as well as his counsel in the lower Court are prepared to tender unconditional apology before the Judicial Magistrate, Tiruchendur for the above incident. Accordingly, they were directed to appear before the Judicial Magistrate, Tiruchendur to file an affidavit tendering unconditional apology for the unpleasant incident happened on 25.1.2002. In obedience to the direction of this Court, both the counsel in the lower Court as well as the petitioner filed separate affidavits on 11.12.2002 before the Judicial Magistrate, Tiruchendur and tendered unconditional apology. By the report dated 11.12.2002, the Judicial Magistrate, Tirucendur, intimated to this Court that both of them filed affidavits tendering unconditional apology and the same were accepted by that Court.

11. Since this Court felt that the police officers in this case have not acted in accordance with law, the officers concerned were summoned by this Court and their respective affidavits were filed. It is seen from the affidavit filed by Mr.Baskaran, Sub Inspector of Police, the investigating officer in this case, has admitted that despite the direction given by the Deputy Superintendent of Police to take action on the complaint sent by the Magistrate only after obtaining opinion of the Assistant Public Prosecutor, he

did not obtain any such legal opinion and straightaway registered the case against the petitioner and the said mistake was only due to his lack of experience.

12. In the meantime, Palanikumar, Sub Inspector of Police, who had beaten the petitioner earlier with reference to which the private complaint had been filed against him and other Constables, was also summoned. The said Palanikumar appeared before this Court, accepted his mistake and also filed an affidavit tendering unconditional apology. In the open Court, the said Palanikumar has also requested the petitioner to excuse him for the acts committed by him. In view of this development in which the Sub Inspector of Police sought excuse from the petitioner in the open Court, the petitioner represented through his counsel before this Court that he is prepared to withdraw the private complaint filed against him. Accordingly, he filed a memo on 19.12.2 002 giving undertaking to withdraw the said private complaint, which was renumbered as C.C.No.57 of 2002 on the file of the Judicial Magistrate, Srivaikuntam.

13. Bearing in the mind the above facts, let us now go into the legality of the proceedings initiated against the petitioner and the resultant orders impugned.

14. On going through the entire papers including the typed set filed by the petitioner and the lower curt records, this Court finds illegality in each and every stage of the proceedings and as such, it has to be held that all the orders passed by the Judicial Magistrate in the case in which he was de-facto complainant, are liable to be held illegal, since the registration of the F.I.R. itself is without jurisdiction. To arrive at such a conclusion, the following are the reasons.

15. It is noticed from the records that on 25.1.2002, the petitioner misbehaved and shouted in the Court using unparliamentary words. This has been entered in 'B' Diary relating to the date 28.1.2002. Furthermore, the details of the incident have been mentioned in the letter dated 25.1.2002 sent by the Judicial Magistrate, Tiruchendur to the chief Judicial Magistrate, Tuticorin requesting for withdrawal of the cases from his file. The Judicial Magistrate, in the light of the above incident, ought to have taken action against the petitioner on the same day itself under Section 228 I.P.C. or reported the matter to the High Court through proper channel requesting for taking action under the Contempt of Court Act. However, he did not choose to take such action. On the other hand, on 28.1.2002, he sent a letter to the Chief Judicial Magistrate requesting for withdrawal of cases with fair

statement that it would not be proper for him to try the cases against him. This gesture may be appreciable. The reading of the said letter dated 28.1.2002 would clearly indicate that the Judicial Magistrate, Tiruchendur wanted to avoid further friction between the Court and the party.

16. Having resorted to adopt such a fair course, it is not understandable as to why the Judicial Magistrate, Tiruchendur on receipt of the anonymous letter suspected to have been written by the petitioner, chose to send the same with a covering letter asking the Deputy Superintendent of Police to take action against the petitioner for the specific offence under Section 503 read with 507 I.P.C. Admittedly, this is an anonymous letter. The Judicial Magistrate specifically mentioned in the complaint that the petitioner is only a suspect. Then, there is no reason as to what was the necessity for the Judicial Magistrate to send a letter to the Deputy Superintendent of Police to register a case under Section 503 read with 507 I.P.C. against the petitioner. This means, he wanted the police to take action against the petitioner immediately even without allowing the police to investigate in regard to the identity of the person who wrote that letter. The said letter was received on 11.2.2002 by the Judicial Magistrate and the same was sent along with the covering letter to the Deputy Superintendent of Police on 12.2.2002. On the same day. the Deputy Superintendent of Police directed the Sub Inspector of Police, Arumughneri to get opinion of the Assistant Public Prosecutor and then register a case. Curiously, the Sub Inspector of Police who was entrusted with the investigation did not choose to obtain opinion, probably out of anxiety to help the Judicial Magistrate but rushed to register the case for the offence under Section 503 read with 507 in Crime No.41/200 2 on 15.2.2002. The covering letter sent by the Judicial Magistrate would show that the Judicial Magistrate specifically stated that the contents of the letter would attract the offence under Section 503 read with 507 I.P.C. This is admittedly bailable and non-cognizable offence. In the F.I.R. registered on the basis of the complaint, namely covering letter of the Judicial Magistrate, the Judicial Magistrate, Tiruchendur has been mentioned as complainant/informant. When the offences for which the case was registered are bailable and noncognizable, the police officer has to necessarily obtain warrant under Section 155 Cr.P.C. before arresting the accused. As indicated above, the complaint was sent on 12.2.2002. On 13.2.2002, the Deputy Superintendent of Police advised the officer concerned to obtain legal opinion from the Assistant Public prosecutor, but no legal opinion was obtained. The case was registered only on 15.2.2002 and without getting the opinion from the Assistant Public prosecutor as directed by the Deputy Superintendent of Police and without obtaining orders under Section 155 Cr.P.C. from the Magistrate for warrant, the police concerned hurriedly arrested the accused on 15.2.2002 and produced before the Magistrate next day i.e. on 16.2.2002 at 5.00 p.m. who has been shown as the complainant in the F.I.R.

17. Having chosen not to take up his matters by writing letter to the Chief Judicial Magistrate to transfer the cases relating to the petitioner to some other Court, the Judicial Magistrate should not have entertained the F.I.R. and the remand report. Moreover, when the F.I.R. shows that he is the complainant, he should have sent the papers and the accused to the Chief

Judicial Magistrate to entrust the matter with some other Court for passing necessary orders. Without adopting this fair means, he has chosen to receive the F.I.R. and remand report and remanded the accused for further 15 days. This is most unfair on the part of the Judicial Magistrate.

18. The principle embodied in Section 479 Cr.P.C., is that no man shall be a Judge in his own cause. Section 479 provides thus:
"479. Cases in which Judge or Magistrate is personally interested.--No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear, an appeal from any judgment or order passed or made by himself."

19. In the instant case, as indicated above, the de-facto complainant as per the F.I.R. is the Judicial Magistrate himself. On the basis of the F.I.R. sent by the Judicial Magistrate, the case was registered against the petitioner and the petitioner was arrested in the case and produced before the same Judicial Magistrate. He has not only remanded the accused for nearly 30 days, but also dismissed the application filed under Section 59 Cr.P.C. holding that his action was perfectly illegal and the same would attract Section 506 I.P.C. also. The reasoning given in the impugned order dismissing the application filed under Section 59 Cr.P.C. is not only perverse, but also unfair. In my view, both the orders of remand and dismissal of the application filed under Section 59 Cr.P.C. are utter violation of Section 479 Cr.P.C.

20. The hurried manner in which the letter was sent by the Judicial Magistrate asking the Deputy Superintendent of Police to register a case for taking action against the petitioner and the case was registered by the police even without getting opinion from the Assistant Public prosecutor and consequent arrest and remand would clearly show that the Judicial Magistrate concerned has judged his own cause and detained the petitioner for about one month by remanding him as a punishment for having written anonymous letter and police also satisfied the Judicial Magistrate by arresting the petitioner to enable the Magistrate to take revenge on the petitioner. This is quite unethical and unlawful. Thus, it is clear that the Judicial Magistrate as well as the police had not acted in accordance with the procedure contemplated in criminal law.
21. Further, the contents of the letter does not indicate any offence much less the offence under Section 503 read with 507 or 506 I.P.C. The averments contained in the inland letter suspected to have been written by the petitioner are more philosophical than intimidating. The averments in the inland letter would not show that the writer of the letter intimidated the Judicial Magistrate and attributed any motive against him. Furthermore, the Judicial Magistrate in his covering letter, namely complaint, did not express any fear for his life or ask for any protection. As such, the ingredients of Section 503 read with 507 or 506 I.P.C. are conspicuously absent in the complaint. Therefore, the registration of the F.I.R. for the offence under Section 503 read with 507 I.P.C. is held to be illegal.
22. Under those circumstances, the F.I.R. is liable to be quashed

and the orders impugned, viz., remand order dated 16.2.2002 and the order under Section 59 Cr.P.C. dated 26.2.2002 and other consequential orders are liable to be set aside and accordingly ordered. Thus, the revision is allowed.

23. Before parting with this case, this Court is constrained to express displeasure over the act of the Judicial Magistrate who wanted to sit as a Judge on his own cause. It is true that the petitioner has committed contempt while he was using unparliamentary words before the Judicial Magistrate, Tiruchendur on 25.1.2002. The Judicial Magistrate ought to have taken appropriate action on that day itself. On the other hand, he wrote a letter to the Chief Judicial Magistrate to transfer the cases relating to the petitioner from his file to some other Court. Such being the case, he should have sent the anonymous letter to police to find out the culprit and then, asked the police to send the F.I.R. if registered for appropriate offences, to some other Court. This is not done. On the other hand, the Judicial Magistrate, Tiruchendur happily remanded the accused not only on 16.2.2002, but also on 1.3.2002 remanding for 30 days on the pretext that no bail application was filed. This is unfortunate. Originally, this Court thought of directing for the administrative action over the act committed by the Judicial Magistrate. However, this Court is not inclined to do the same in the hope that at least in the future, the Judicial Magistrate, Tiruchendur would not commit such 'serious blunder', namely 'Exercise the powers of the Magistracy for his own cause'.

Index: Yes
Internet:Yes

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To
1) The Principal District Munsif-cum-Judicial Magistrate, Tiruchendur.
2) The Chief Judicial Magistrate, Tuticorin.
3) The Inspector of Police, Tiruchendur Police Station.
4) The Public Prosecutor, High Court, Madras.

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